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**And what if they do not buy it?  
Reflections on how to win the constitutional referenda and  
consequences of (non) ratification**

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As the constitutional talks are to resume in May 2004 and it seems that there might be a deal by the end of the Irish presidency, it is time for European leaders to look beyond. Although it seems that coming to a compromise on the final text is the utmost priority at the moment, it is necessary to bear in mind that this will be only the beginning of a painful birth of European Constitution. And it is far from certain whether or not the child is going to be delivered at all.

It is clear that the ratification procedure will be more complicated than ever before. One reason is that the new constitutional treaty will have to be ratified in 25 countries and more countries than ever are going to hold referenda on it. Those who are certain to have a popular vote include Denmark and Ireland where this mode of ratification is required by constitutional provisions, and the Netherlands and Britain where it is a matter of a political decision. Other countries are likely to follow – Luxembourg, Spain, Portugal, the Czech Republic and Poland are almost certain to take a popular vote, too. But this is not the end of the road – Chirac is still playing around with the idea, even though he seems reluctant to commit himself firmly at this stage. And other countries might still follow. The referenda are often considered to be a very tricky and risky way of ratification, and the examples of Ireland or Denmark certainly seem to prove this.

The second aspect that makes the prospect of ratification more difficult is the overall European milieu which does not seem to be favourable at the moment. There is uncertainty about the impacts of enlargement, accompanied with a weak economic performance in the Eurozone, continuing tension between small and big states and between the contributors to and recipients from the EU budget. Furthermore there is considerable discontent over the European policy towards the Middle East and the way things have gone wrong in Iraq, along with gradual “disintegration” of the European Commission even before its term expires. These are but a few issues that have contributed to a loss of trust in the European project among large portions of

European population. This atmosphere will certainly not help Europe to get its first ever Constitution approved.

Surprisingly enough, there does not seem to be an open reflection of the prospect that if the Constitution does get through in a number of countries in referenda, it will signify an extremely important boom for European integration. It will demonstrate that there is a real European demos emerging, and the outcome would be extremely important in legitimising the continuation of the European project. Thus what is viewed as a potential risk for the EU could turn into its greatest asset. But of course, it demands the European leaders who are committed to putting the Constitution to the people to be very serious about it. They will have to put their political credit on the line and perhaps link their future political careers to the outcome. They need to be fully engaged in the debates, perhaps jointly, to show that the matter is far too serious to be hijacked by nationalists, populists, anti-federalists or other groups opposed to the Constitution. It seems that at least Tony Blair is ready to do so, and there is no surprise about that – he is quite aware that this is one of the few ways to win the referendum. But following the debacle in Iraq and given the strong dislike of the Constitution by Murdoch's press, it is going to be very difficult. Still it would be good if the others follow him.

On the other hand in some countries the prospect of ratification by a popular vote is actually better than that by the legislature. In both Poland and the Czech Republic, the opposition to the Constitutional Treaty in the Parliament is quite strong. In Poland the prospect will very much depend on the outcome of the QMV deal and the reference to Christianity. Given the fact that in the Czech Republic the approval will need a qualified majority (60% of all votes in Chamber of Deputies and 60% of votes cast in the Senate) it would be difficult for the ruling coalition to secure the approval of opposition Civic Democrats and Communists. On the contrary, a well conducted campaign drawing on the successful experience of the accession referendum may prove to be a good way to push the ratification through.

Some European politicians, during the Convention, advocated holding a pan-European approval of the Constitution by European citizens. This is not a realistic option for two reasons. Firstly, the current amendment procedure does not allow for this, unless the EU wants to take the path of constitutional revolution for which it is neither prepared nor ripe. Secondly, almost none of the member states would be willing to surrender the principle of states being the masters of treaty (although the Constitution recognises two sources of European legitimacy, i.e. states and peoples). However, there is a certain element of "inspiration" that can be used by those countries that are going to have referenda. A co-ordination of the dates of referenda in those countries holding it could be envisaged. It would enable co-ordination of joint efforts in the campaigns. The political leaders and other political forces (pro as well as anti Constitution) could engage in a cross-border debates and bring in issues which are genuinely European. Otherwise, the referendums risk being lost in an overflow of national issues which are not really going to have much to do with the Constitution, being dominated by national (and even nationalistic) rhetoric and thereby lose the pan-European momentum of the debate generated by the Convention. Of course it is a big step but the leaders should be well aware what is at stake.

Unfortunately, given the current constellation of political factors, one has to be ready for the opposite scenario. If the ratification fails it does not necessarily imply immediate problems– the Union will keep running on the basis of Nice. While some politicians might be tempted to play the importance of ratification failure down, and the Union could indeed be run on the current provisions for some years to come. Undoubtedly in a medium-term this would cause serious turbulence on the European scene. Various scenarios can be envisaged and none of them is positive.

If there is only one recalcitrant country, say Denmark, the pressure for this country to leave the EU will be quite high. It is highly unlikely that the EU leaders will be willing to re-negotiate the hard-fought deal. Nor might they be willing to wait for the recalcitrant country to put the Constitution to a second vote. It is most likely that the EU will try to negotiate terms of co-existence similar to those of the European Economic Area or Switzerland. It will be, however, more difficult, if the recalcitrant country is Britain. Firstly, it is in many respects indispensable for further integration of EU in some policy areas, notably defence which is one of the frontrunners for closer co-operation. Secondly, Britain is viewed by some countries, not least by many newcomers, as a suitable counterbalance to the Franco-German tandem. Thus they might not be too enthusiastic about Britain exiting the EU.

A similar scenario can be envisaged for some of the newcomers – it is not very likely that Poland or Malta might be willing to withdraw voluntarily from the Union they have just entered.

This scenario of a voluntary withdrawal from the Union, however, does not have to be disastrous. In some cases, it may do away with the frustration of large parts of populations and find an arrangement which will supposedly be more suitable. But it would certainly not be viewed positively by both the Europeans and the outside world.

One way of winning the approval is to link the question of the Constitution to withdrawing from the EU. This might help to mobilise the public opinion and win the necessary support. The example of Britain shows that although the British public is quite euro-sceptic, Britons do not want to leave the Union. In fact, for Blair who lost much of his political credibility over Iraq this might be the only way forward. The disadvantage is that it might be presented by the opponents of such a move as a kind of blackmail tactic and that the two issues are completely separate. An argument against that can be that this is basically what happened already in 1975 where the British were also deciding on their willingness to be part of the European Community.

In any case, should there be more countries that fail to ratify the Constitution, the scenario of their withdrawal becomes even less likely and more questions will emerge. If the Constitution cannot come into force, various new arrangements could appear, without necessarily having a new treaty negotiated. In fact, negotiation fatigue is likely to prevent any further attempts to do so. In the current treaties there is a framework for enhanced co-operation. Using such a strategy is risky for a number of reasons. The current provisions might prove to be still too stringent on the member states that want to proceed in integration further. It does not allow for the mechanism to be used in the area of security and defence policy where it is arguably most

needed. And in some areas the current treaties do not even have a legal basis for further integration, e.g. creation of a European public prosecutor or energy policy. This implies that the most likely and practically the only way forward for those who want to do so would be to co-operate outside the current treaty framework. This would make the idea of two-speed Europe a reality. It will exclude those players who can keep the integration under control, especially the Commission, and could create an elite club or "Union outside the Union" which will decide merely on its own whom to accept. Needless to say, such a scenario could turn out to be disastrous for Europe, only recently reunited.

Another aspect which is often neglected is what effects the failure to reach a deal on the Constitution can cause externally. It is viewed as solely an internal EU business (which it surely is) and does not take into account that there are still candidates waiting outside (Bulgaria and Romania) but also other close neighbours. It would be too courageous to claim that the constitutional crisis in the EU might destabilise these countries or regions, but surely it can undermine much of the centripetal effect which attracts these countries to the EU. Thus the EU's credibility as an actor in some parts of Europe, e.g. in the Western Balkans, could be severely damaged.

It is difficult to draw any conclusions in this respect now. Firstly, we do not know whether the Constitution will be approved by the end of June. Secondly, we still do not know what kind of Constitution we will get. The nature of the final compromise will also have an impact on how it will be perceived by the citizens and parliaments, to what extent it will meet the Laeken expectations and whether it will alter significantly the Convention text. But what is for sure is that the ratification will be difficult but not impossible to win. It will require great mobilisation of European political forces in cross-border debates to restore the spirit of a pan-European debate which was present during the Convention. Especially in the countries holding the referendums the political leaders will have to put all their credibility on the issue. If the ratification gets through, it will be one of the greatest assets for EU legitimacy. If it fails, it will certainly bring about serious consequences on the European scene, none of which is going to be positive.